

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA - LAFAYETTE DIVISION

GOLDMAN SACHS BANK USA,

Plaintiff,

v.

MICHEL B. MORENO, TIFFANY C.  
MORENO, MBM 2011 DOH GRANTOR  
RETAINED ANNUITY TRUST, TCM 2011  
DOH GRANTOR RETAINED ANNUITY  
TRUST, MBM 2011 MGH GRANTOR  
RETAINED ANNUITY TRUST, TCM 2011  
MGH GRANTOR RETAINED ANNUITY  
TRUST, MORENO PROPERTIES TWO,  
LLC, AND NICHOLSON ESTATES,  
L.L.C.,

Defendants.

CIVIL CASE NO. 15-2018

JUDGE REBECCA F. DOHERTY

MAGISTRATE JUDGE C. MICHAEL HILL

**MOTION TO MAINTAIN EXECUTORY PROCEEDING, TO RECONSIDER THE  
COURT'S RULING, AND FOR WRIT OF SEIZURE AND SALE**

NOW INTO COURT, through undersigned counsel, comes Goldman Sachs Bank USA (“Goldman Sachs”), who moves this Court to reconsider its ruling and maintain this matter as an executory proceeding, and based thereon, for an order issuing a writ of seizure and sale (and any other applicable order and/or instruction), which directs (i) the U.S. Marshal’s office for the Western District of Louisiana to seize and sell the Port Road Property, located in

the City of New Iberia, Parish of Iberia, as defined in the Verified Complaint filed herein, and (ii) the U.S. Marshal's office for the Middle District of Louisiana to seize and sell the Nicholson Estates Property, located in Baton Rouge, East Baton Rouge Parish, as defined in the Verified Complaint, in partial satisfaction of the amounts due and owing to Goldman Sachs, as further detailed in the Verified Complaint.

On July 8, 2015, Goldman Sachs filed its verified complaint for executory process with the benefit of appraisal (the "**Verified Complaint**").<sup>1</sup> The Verified Complaint seeks to seize and sell the Port Road Property and the Nicolson Estates Property via executory process pursuant to the confessions of judgment entered into by the Defendant-Mortgagors that are contained in each of the Mortgages.

On July 22, 2015, two of the Defendants, Moreno Properties Two, LLC and Nicholson Estates, LLC (the "**Defendant-Mortgagors**"), filed an Answer in contravention to established law regarding executory process. Rec. Doc. No. 4 (the "**Answer**"). On July 31, 2015, this Court entered a ruling stating that it will not issue the requested writs at this time because it was unsure of its authority to maintain an executory proceeding in federal court. The Court's ruling, however, invited Goldman Sachs to demonstrate that an executory proceeding may be maintained in this Court.

The accompanying memorandum establishes that, under the facts of this case, this Court must allow the executory proceeding to proceed pursuant to, *inter alia*, Federal Rule

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<sup>1</sup> All capitalized terms have the same meaning ascribed to them in the Verified Complaint (Rec. Doc. No. 1).

of Civil Procedure 69 and/or under the doctrine of *Erie R.R. Co. v. Tompkins*<sup>2</sup> and the Fifth Circuit precedent established under *Weems v. McCloud*, 619 F.2d 1081 (5th Cir. 1980).

**WHEREFORE**, Goldman Sachs Bank USA requests that the Court reconsider its Ruling and maintain this case as an executory proceeding, and, based thereon, enter an order issuing a writ of seizure and sale (and any other applicable order and/or instruction), that directs the U.S. Marshal's office for the Western District of Louisiana to seize and sell both the Port Road Property, and the U.S. Marshal's office for the Middle District of Louisiana to seize and sell the Nicholson Estates Property, and that such sales shall be in partial satisfaction of the amounts due and owing to Goldman Sachs Bank USA.

Respectfully submitted

/s/ Laura F. Ashley

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<sup>2</sup> *Erie R.R. Co. v. Tompkins*, 304 U.S. 64 (1938)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the *Motion to Maintain Executory Proceeding, to Reconsider the Court's Ruling, and for Writ of Seizure and Sale* was served by U.S. Mail, postage prepaid, on William E. Steffes, Steffes, Vingiello & McKenzie, LLC, 13702 Coursey Blvd., Building 3, Baton Rouge, LA 70817, on this 11th day of August, 2015, and by ECF filing.

/s/ Laura F. Ashley